

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

**HOUSTON SPECIALTY
INSURANCE COMPANY,
Plaintiff**

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CIVIL NO:

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SECTION:

VERSUS

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JUDGE :

**CHESAPEAKE OPERATING, LLC,
JC FODALE ENERGY SERVICES,
LLC, AND DCW TRANSPORT, LLC
Defendants**

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MAGISTRATE JUDGE:

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COMPLAINT FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes Houston Specialty Insurance Company (“Houston Specialty”), and respectfully shows as follows:

1.

Made defendants herein are:

- A. Chesapeake Operating, LLC;
- B. JC Fodale Energy Services, LLC; and
- C. DCW Transport, LLC.

2.

Houston Specialty is a Texas insurance corporation with its principal place of business in the State of Texas. Chesapeake Operating, LLC (“Chesapeake”) is a limited liability company organized and existing under the laws of Oklahoma, with its principal place of business in Oklahoma. It is a wholly-owned subsidiary of Chesapeake Energy Corporation. Upon information and belief, any and all members of the Chesapeake LLC are domiciled in Oklahoma. For the purposes of this action, Chesapeake Operating, LLC is a citizen of Oklahoma pursuant to 28 U.S.C. §1332(d)(10). JC Fodale Energy Services, LLC (“Fodale”), is a limited liability company organized and existing under the laws of the state of Louisiana with its principal place of business in Louisiana. Upon information and belief, all members of the Fodale LLC are individuals domiciled in the state of Louisiana. DCW Transport, LLC (“DCW”), is a limited liability company organized and existing under the laws of the state of Louisiana with its principal place of business in Louisiana. Upon information and belief, all members of the DCW LLC are individuals domiciled in the state of Louisiana.

Therefore, diversity of citizenship exists between the parties.

3.

This suit concerns a dispute over coverage under a policy of commercial liability insurance issued by Houston Specialty to DCW Transport, LLC (“DCW”), policy number HSLR18-01355-00, with a policy period from September 21, 2011 to September 21, 2012 (hereinafter, “the Houston Specialty policy”). Defendants seek coverage and

defense costs under the Houston Specialty policy for a personal injury suit filed in the State of Texas, styled “*Courtney Williams v. JC Fodale Energy Services, LLC D/B/A JC Fodale Energy Services LLC, Chesapeake Operating, LLC, Chesapeake Energy Corporation*”, Cause No. 2014-45320, 127th District Court of Harris County, Texas (hereinafter, “the *Williams* suit.”). The *Williams* suit alleges that, on August 11, 2012, Williams was employed as a driver for DCW and was sitting in parked DCW truck on a Chesapeake job site when a Fodale employee drove a forklift into the DCW truck occupied by Williams, causing him injuries.

The Houston Specialty policy does not provide coverage for Defendants for the losses and damages alleged in the *Williams* suit, as discussed in more detail below.

4.

The plaintiff in the *Williams* suit claims damages for serious and permanent injuries to his cervical and lumbar spine, and seeks recovery of past, present and future pain and suffering damages, medical expenses, past loss of earnings, future loss of earnings, impairment, disability and mental anguish. The *Williams* plaintiff also seeks exemplary damages based on allegations of gross negligence. Upon information and belief, the amount in dispute in the *Williams* suit exceeds \$75,000. Defendants seek coverage for all of those damages under the Houston Specialty policy and seek to have Houston Specialty pay the defense costs associated with said suit. Thus, Defendants claims against Houston Specialty exceed \$75,000, exclusive of interest and costs.

Therefore, the amount in dispute in this litigation is in excess of the jurisdictional limit for diversity jurisdiction.

5.

The Houston Specialty policy was issued, and has at all times been administered, by Regional Insurance Services Company, LLC (“RISCOM”), the managing general agent in Louisiana for Houston Specialty, in Shreveport, Caddo Parish, Louisiana. The Houston Specialty policy was executed, or bound, in Caddo Parish, Louisiana. The original application for the Houston Specialty policy was received, and the policy rated, underwritten, approved and executed in Shreveport. Venue is, therefore, proper in the United States District Court for the Western District of Louisiana.

6.

The Houston Specialty policy provides no coverage for any of the losses or claim referred to in the *Williams* for the reasons set forth below.

7.

The insuring agreements in the Houston Specialty policy provide that coverage is extended only to parties qualifying as “insureds” under the terms of the policy. The named insured on the policy is DCW. Neither Chesapeake nor Fodale are named insureds on the policy. Further, neither Chesapeake nor Fodale qualify as omnibus or additional insureds under the terms of the policy. Because Chesapeake and Fodale are not insureds under the policy, the policy does not provide coverage for them for the

losses and damages alleged in the *Williams* suit and Houston Specialty has no obligation to defend them in the *Williams* suit.

8.

The Houston Specialty policy contains provisions that exclude coverage under the policy for bodily injury to employees of the insured arising out of and in the course and scope of employment by the named insured, or performing duties related to the insured's business. The *Williams* suit alleges bodily injury to Williams, an employee of DCW, which occurred while he was acting in the course and scope of his employment for DCW and in furtherance of his duties for DCW. Further, pursuant to a Master Service Agreement executed between Chesapeake and DCW, Williams qualifies as a statutory employee of Chesapeake. Therefore, coverage for all losses alleged in the *Williams* suit is unambiguously excluded under the Houston Specialty policy.

9.

Coverage under the Business Auto and Motor Carrier coverage forms of the Houston Specialty policy limit coverage to losses "resulting from the ownership, maintenance or use of a covered auto." The *Williams* suit alleges that Williams was sitting still in the DCW truck when it was struck by a forklift driven by a Fodale employee. Thus, the losses alleged in the *Williams* suit did not result from the ownership, maintenance or use of a covered auto, and there is no coverage for any party for said losses under the Business Auto and Motor Carrier coverage forms of the Houston Specialty policy.

10.

The Business Auto and Motor Carrier coverage forms in the Houston Specialty policy contain an exclusion for losses “resulting from the movement of property by a mechanical device.” The *Williams* suit alleges that Williams’ injuries were caused by the operator of a forklift. Therefore, coverage for all losses alleged in the *Williams* suit is unambiguously excluded under the Business Auto and Motor Carrier coverage forms of the Houston Specialty policy.

11.

The Houston Specialty policy contains other limitations and exclusions which do, or may, exclude coverage to Defendants for the losses and damages alleged in the *Williams* suit.

12.

An actual, present and existing controversy has arisen between Houston Specialty on the one hand and Defendants on the other, with respect to the existence and scope of coverage under the Houston Specialty policy. Houston Specialty desires a judicial declaration of its rights and duties under its policy.

WHEREFORE, HOUSTON SPECIALTY INSURANCE COMPANY PRAYS that after due proceedings had, there be declaratory judgment herein in favor of Houston Specialty Insurance Company and against Chesapeake Operating, LLC, JC Fodale Energy Services, LLC and DCW Transport, LLC, declaring that no defense or indemnity coverage is owed to said parties under Houston Specialty policy number HSLR18-01355-

00 for any and all losses, damages or costs arising out of or related to the *Williams* suit;
and

FURTHER PRAYS for full, general and equitable relief.

Respectfully submitted,

PETTIETTE, ARMAND, DUNKELMAN,
WOODLEY, BYRD & CROMWELL, L.L.P.

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